

AMENDED IN ASSEMBLY APRIL 8, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 26

Introduced by Assembly Member Migden

Migden, Kuehl, and Villaraigosa

(Coauthors: Assembly Members Alquist, Aroner, Calderon, Firebaugh, Keeley, Knox, Lempert, Longville, Mazzoni, Romero, and Steinberg)

(Coauthors: Senators Bowen, Solis, Speier, and Vasconcellos)

December 7, 1998

An act to add Division 2.5 (commencing with Section 297) to the Family Code, to add Sections 1261 and 1374.58 to the Health and Safety Code, and to add Section 10121.7 to the Insurance Code, relating to domestic partners.

LEGISLATIVE COUNSEL'S DIGEST

AB 26, as amended, Migden. Domestic partners.

(1) Existing law sets forth the requirements of a valid marriage, and specifies the rights and obligations of spouses during marriage.

This bill would define “domestic partners” and provide for the registration of domestic partnerships with the Secretary of State. The bill would also specify procedures for the termination of domestic partnerships. The bill would prohibit a person who has filed a Declaration of Domestic Partnership from filing a new declaration until at least 6 months has elapsed from the date that a Notice of Termination of

Domestic Partnership was filed with the Secretary of State in connection with the termination of the most recent domestic partnership, except where the previous domestic partnership ended because one of the partners died.

The bill would require the Secretary of State to prepare forms for the registration and termination of domestic partnerships, and distribute these forms to each county clerk. The bill would require the Secretary of State to establish by regulation and charge fees for processing these forms. The bill would require these forms to be available to the public at the office of the Secretary of State and each county clerk. A Declaration of Domestic Partnership would be required to be ~~signed under penalty of perjury, accompanied by a specified declaration of veracity. Violation of this requirement would be a misdemeanor.~~ By ~~expanding the crime of perjury~~ creating a new crime and by increasing the duties of the county clerk, the bill would impose a state-mandated local program.

This bill would provide that any domestic partnership entered into outside of this state, which would be valid by the laws of the jurisdiction under which the partnership was created, shall be valid in this state.

(2) Existing law does not specify requirements concerning patient visitation in all health facilities.

This bill would require a health facility to allow a patient's domestic partner and other specified persons to visit a patient, except under specified conditions.

(3) Existing law provides for the licensure and regulation of health care service plans administered by the Commissioner of Corporations. Under existing law, a willful violation of any of these provisions is punishable as either a felony or a misdemeanor. Existing law also provides for the regulation of policies of disability insurance administered by the Insurance Commissioner.

Existing law requires that health care service plans and disability insurers provide coverage for certain benefits and services.

This bill would require a group health care service plan and a policy of disability insurance that provides hospital, medical, or surgical expense benefits ~~for employees, subscribers,~~

~~insureds, or policyholders and their dependents to provide eligibility and benefits to~~ *to offer coverage to employers and guaranteed associations for a domestic partner of an employee, subscriber, insured, or policyholder to the same extent, and subject to the same terms and conditions, as provided to a dependent of an employee, subscriber, insured, or policyholder. The bill would also require that if an employer or guaranteed association elects to purchase coverage for domestic partners, a health care service plan or a policy of group disability insurance that provides hospital, medical, or surgical expense benefits for employees, subscribers, insureds, or policyholders and their dependents to shall enroll as a dependent, upon application by the employer or group administrator, a domestic partner of the employee, subscriber, insured, or policyholder when that employee, subscriber, insured, or policyholder at any time makes an application for enrollment to the employer or group administrator in accordance with the terms and conditions of the group contract, as specified. The bill would also provide that such a health care service plan or policy of group disability insurance may require a copy of a valid Declaration of Domestic Partnership and notification of termination of the domestic partnership.*

Since a willful violation of the provisions applicable to health care service plans is a crime, this bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, with regard to certain mandates, no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state,

reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Division 2.5 (commencing with Section
2 297) is added to the Family Code, to read:

3
4 DIVISION 2.5. DOMESTIC PARTNER
5 REGISTRATION
6

7 PART 1. DEFINITIONS
8

9 297. (a) Domestic partners are two adults who have
10 chosen to share one another's lives in an intimate and
11 committed relationship of mutual caring.

12 (b) A domestic partnership shall be established when
13 all of the following requirements are met:

14 (1) Both persons have a common residence.

15 (2) Both persons agree to be jointly responsible for
16 each other's basic living expenses *incurred* during the
17 domestic partnership.

18 (3) Neither person is married or a member of another
19 domestic partnership.

20 (4) The two persons are not related by blood in a way
21 which would prevent them from being married to each
22 other in this state.

23 (5) Both persons are at least 18 years of age.

24 (6) Both file a Declaration of Domestic Partnership
25 with the Secretary of State pursuant to this division.

26 (c) "Have a common residence" means that two
27 people are cohabitants. It is not necessary that the legal
28 right to possess the common residence be in both of their
29 names. Two people are cohabitants even if one or both
30 have additional residences. Domestic partners do not
31 cease to be cohabitants if one leaves the common
32 residence but intends to return.

(d) “Basic living expenses” means food and shelter. It also means any other cost, such as medical care, if some or all of the cost is paid as a benefit because a person is another person’s domestic partner.

(e) “Joint responsibility” means that each partner agrees to provide for the other partner’s basic living expenses if the partner is unable to provide for herself or himself. ~~Anyone to whom these expenses are owed may enforce this responsibility.~~ *himself.*

PART 2. REGISTRATION

298. (a) The Secretary of State shall prepare forms entitled “Declaration of Domestic Partnership” and “Notice of Termination of Domestic Partnership” to meet the requirements of this division. These forms shall require the signature and seal of an acknowledgment by a notary public to be binding and valid.

(b) (1) The Secretary of State shall distribute these forms to each county clerk. These forms shall be available to the public at the office of the Secretary of State and each county clerk.

(2) The Secretary of State shall, by regulation, establish fees for the actual costs of processing each of these forms, and shall charge these fees to persons filing the forms.

(c) The Declaration of Domestic Partnership shall require each person who wants to become a domestic partner to (1) state that he or she meets the requirements of Section 297 at the time the form is signed, (2) provide a mailing address, (3) sign the form ~~under penalty of perjury~~ *with a declaration that representations made therein are true, correct, and contain no material omissions of fact to the best knowledge and belief of the applicant,* and (4) have a notary public notarize his or her signature. *Violations of this subdivision are punishable as a misdemeanor.*

298.5. (a) Two persons desiring to become domestic partners may complete and file a Declaration of Domestic Partnership with the Secretary of State.

(b) No person who has filed a Declaration of Domestic Partnership may file a new Declaration of Domestic Partnership until at least six months after the date that a Notice of Termination of Domestic Partnership was filed with the Secretary of State pursuant to subdivision (b) of Section 299 in connection with the termination of the most recent domestic partnership. This prohibition does not apply if the previous domestic partnership ended because one of the partners died.

PART 3. TERMINATION

299. (a) A domestic partnership is terminated when any one of the following occurs:

(1) One partner gives or sends to the other partner a written notice that he or she is terminating the partnership.

(2) One of the domestic partners dies.

(3) One of the domestic partners marries.

(4) The domestic partners no longer have a common residence.

(b) Upon termination of a domestic partnership, at least one former partner shall file a Notice of Termination of Domestic Partnership with the Secretary of State. The partner who files the Notice of Termination of Domestic Partnership shall send a copy of the notice to the last known address of the other partner.

(c) A former domestic partner who has given a copy of a Declaration of Domestic Partnership to any third party in order to qualify for any benefit or right shall, within 60 days of termination of the domestic partnership, give or send to the third party, at the last known address of the third party, written notification that the domestic partnership has been terminated. A third party who suffers a loss as a result of failure by the domestic partner to send this notice shall be entitled to seek recovery from the partner who was obligated to send it for any actual loss resulting thereby.

(d) Failure to file the Notice of Termination of Domestic Partnership required in subdivision (b) or to

1 provide the third party notice required in subdivision (c)
2 shall not delay or prevent the termination of the domestic
3 partnership.

4
5 PART 4. LEGAL EFFECT
6

7 299.5. (a) The obligations that two people have to
8 each other as a result of creating a domestic partnership
9 are those described in Section 297. Registration as a
10 domestic partner under this division shall not be evidence
11 of, or establish, any rights existing under law other than
12 those expressly provided to domestic partners in this
13 division, Sections 1261 and 1374.58 of the Health and
14 Safety Code, or Section 10121.7 of the Insurance Code.

15 The provisions relating to domestic partners provided
16 in this division, Sections 1261 and 1374.58 of the Health
17 and Safety Code, and Section 10121.7 of the Insurance
18 Code shall not diminish any right under any other
19 provision of law.

20 (b) Upon the termination of a domestic partnership,
21 the partners, from that time forward, shall incur none of
22 the obligations to each other as domestic partners that are
23 created by this division, Sections 1261 and 1374.58 of the
24 Health and Safety Code, or Section 10121.7 of the
25 Insurance Code.

26 (c) Any domestic partnership entered into outside of
27 this state, which would be valid by the laws of the
28 jurisdiction under which the partnership was created,
29 shall be valid in this state.

30 SEC. 2. Section 1261 is added to the Health and Safety
31 Code, to read:

32 1261. (a) A health facility shall allow a patient's
33 domestic partner, the children of the patient's domestic
34 partner, and the domestic partner of the patient's parent
35 or child to visit, unless one of the following is met:

36 (1) No visitors are allowed.

37 (2) The facility reasonably determines that the
38 presence of a particular visitor would endanger the
39 health or safety of a patient, member of the health facility

1 staff, or other visitor to the health facility, or would
2 significantly disrupt the operations of a facility.

3 (3) The patient has indicated to health facility staff
4 that the patient does not want this person to visit.

5 (b) This section may not be construed to prohibit a
6 health facility from otherwise establishing reasonable
7 restrictions upon visitation, including restrictions upon
8 the hours of visitation and number of visitors.

9 (c) For purposes of this section, “domestic partner”
10 has the same meaning as that term is used in Section 297
11 of the Family Code.

12 SEC. 3. Section 1374.58 is added to the Health and
13 Safety Code, to read:

14 1374.58. (a) A group health care service plan that
15 provides hospital, medical, or surgical expense benefits
16 ~~for employees or subscribers and their dependents shall~~
17 ~~provide eligibility or benefits to the domestic partner of~~
18 ~~shall offer coverage to employers or guaranteed~~
19 ~~associations, as defined in Section 1357, for the domestic~~
20 ~~partner of an employee or subscriber to the same extent,~~
21 and subject to the same terms and conditions, as provided
22 to a dependent of the employee or subscriber, *and shall*
23 *inform employers and guaranteed associations of the*
24 *availability of this coverage.*

25 (b) ~~A—If an employer or guaranteed association elects~~
26 ~~to purchase coverage for domestic partners pursuant to~~
27 ~~subdivision (a), a health care service plan that provides~~
28 hospital, medical, or surgical expense benefits for
29 employees or subscribers and their dependents shall
30 enroll as a dependent, upon application by the employer
31 or group administrator, a domestic partner of an
32 employee or subscriber, ~~at any time the employee or~~
33 ~~subscriber makes an application for enrollment to the~~
34 ~~employer or group administrator.~~ *subscriber in*
35 *accordance with the terms and conditions of the group*
36 *contract that apply generally to all dependents under the*
37 *plan, including coordination of benefits.*

38 (c) For purposes of this section, the term “domestic
39 partner” shall have the same meaning as that term is used
40 in Section 297 of the Family Code.

(d) A health care service plan may require that the employee or subscriber verify the status of the domestic partnership by providing to the plan a copy of a valid "Declaration of Domestic Partnership" filed with the Secretary of State pursuant to Section 298 or an equivalent document issued by a local agency of this state, another state, or a local agency of another state under which the partnership is created. The plan may also require that the employee or subscriber notify the plan upon the termination of the domestic partnership.

(e) Nothing in this section shall be construed to expand the requirements of Section 4980B of Title 26 of the United States Code, Section 1161, and following, of Title 29 of the United States Code, or Section 300bb-1, and following, of Title 42 of the United States Code, as added by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272), and as those provisions may be later amended.

SEC. 4. Section 10121.7 is added to the Insurance Code, to read:

10121.7. (a) A policy of group disability insurance that provides hospital, medical, or surgical expense ~~benefits for employees, insureds, or policyholders and their dependents shall provide eligibility and benefits to~~ *benefits shall offer coverage to employers or guaranteed associations, as defined in Section 10700, for the domestic partner of an employee, insured, or policyholder to the same extent, and subject to the same terms and conditions, as provided to a dependent of the employee, insured, or policyholder; and shall inform employers and guaranteed associations of the availability of this coverage.*

~~(b) Each policy of group disability insurance that~~

(b) If an employer or guaranteed association elects to purchase coverage for domestic partners pursuant to subdivision (a), a disability insurer that provides hospital, medical, or surgical expense benefits for employees, insureds, or policyholders and their dependents shall enroll as a dependent, upon application by the employer or group administrator, a domestic partner of the

1 employee, insured, or policyholder when that employee,
2 insured, or policyholder ~~at any time makes an application~~
3 ~~for enrollment to the employer or group administrator.~~
4 *in accordance with the terms and conditions of the group*
5 *contract that apply generally to all dependents under the*
6 *policy, including coordination of benefits.*

7 (c) For purposes of this section, the term “domestic
8 partner” shall have the same meaning as that term is used
9 in Section 297 of the Family Code.

10 (d) *A policy of group disability insurance may require*
11 *that the employee, insured, or policyholder verify the*
12 *status of the domestic partnership by providing to the*
13 *insurer a copy of a valid “Declaration of Domestic*
14 *Partnership” filed with the Secretary of State pursuant to*
15 *Section 298 or an equivalent document issued by a local*
16 *agency of this state, another state, or a local agency of*
17 *another state under which the partnership is created. The*
18 *policy may also require that employee, insured, or*
19 *policyholder notify the insurer upon the termination of*
20 *the domestic partnership.*

21 (e) *Nothing in this section shall be construed to*
22 *expand the requirements of Section 4980B of Title 26 of*
23 *the United States Code, Section 1161, and following, of*
24 *Title 29 of the United States Code, or Section 300bb-1, and*
25 *following, of Title 42 of the United States Code, as added*
26 *by the Consolidated Omnibus Budget Reconciliation Act*
27 *of 1985 (Public Law 99-272), and as those provisions may*
28 *be later amended.*

29 SEC. 5. No reimbursement is required by this act
30 pursuant to Section 6 of Article XIII B of the California
31 Constitution for certain costs that may be incurred by a
32 local agency or school district because in that regard this
33 act creates a new crime or infraction, eliminates a crime
34 or infraction, or changes the penalty for a crime or
35 infraction, within the meaning of Section 17556 of the
36 Government Code, or changes the definition of a crime
37 within the meaning of Section 6 of Article XIII B of the
38 California Constitution.

39 However, notwithstanding Section 17610 of the
40 Government Code, if the Commission on State Mandates

1 determines that this act contains other costs mandated by
2 the state, reimbursement to local agencies and school
3 districts for those costs shall be made pursuant to Part 7
4 (commencing with Section 17500) of Division 4 of Title
5 2 of the Government Code. If the statewide cost of the
6 claim for reimbursement does not exceed one million
7 dollars (\$1,000,000), reimbursement shall be made from
8 the State Mandates Claims Fund.

9 Notwithstanding Section 17580 of the Government
10 Code, unless otherwise specified, the provisions of this act
11 shall become operative on the same date that the act
12 takes effect pursuant to the California Constitution.

